

LOCAL GOVERNMENT GRANT AGREEMENT

THE ONE NORTH CAROLINA FUND

Local Government Name: **City of Durham** Grant No. **2015-17041**

Project Name: **WillowTree, Inc.**

STATE OF NORTH CAROLINA

GRANT AGREEMENT

COUNTY OF WAKE

This Local Government Grant Agreement (the “**LGGA**”) is effective the 19th day of Novemer, 2015 (the “**Effective Date**”) by and between the **City of Durham, North Carolina** (hereinafter referred to as the “**Local Government**”), and the **North Carolina Department of Commerce** (hereinafter referred to as “**DOC**”);

WITNESSETH:

WHEREAS; the Local Government desires to stimulate and develop the local economy of its region, alleviate the problems of unemployment and underemployment by creating and/or retaining jobs for its citizens, and develop its local tax base; and

WHEREAS; the General Assembly has created the One North Carolina Fund (the “**Program**”) to make funding available within North Carolina “to secure commitments for the recruitment, expansion or retention of new or existing businesses”; and

WHEREAS; the General Assembly has authorized Program funds to be used for installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings; and construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations; and

WHEREAS; the Local Government has applied for funds in connection with activity to be undertaken by WillowTree, Inc. (the “**Company**”), a business that has competitively chosen to locate or expand operations for the following project (the “**Project**”) in North Carolina:

An expansion of a mobile software services plant (the “**Facility**”) at which the company will perform software application research and development, mobile design, marketing, sales, customer support, and administrative activities, located in the City of Durham, Durham County, North Carolina.

WHEREAS; the Local Government has committed to provide matching funds and resources for the Project equal to at least the amount of any funds awarded from the Program (the **"Match"**); and

WHEREAS; the Local Government's application (the **"Local Government Application"**) has been approved by DOC for funding, based on the Local Government's commitments, and the commitments made by the Company in its Program application (the **"Company Application"**);

WHEREAS, the Company has executed an agreement (the **"Company Performance Agreement"** or **"CPA"**) with the Local Government reflecting the Company's commitments to expand, create and/or retain jobs and to take other actions that will support North Carolina's economic development, and the terms on which funds will be made available for such activity from the Program;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth below, the Local Government and DOC hereby agree as follows:

I. DOC COMMITMENTS AND GRANT CONDITIONS

(a) DOC agrees to provide Program fund in the maximum amount of Seventy Three Thousand Five Hundred Dollars (\$73,500) for the Project (the **"Grant"**), in accordance with the terms of this LGGA and the CPA.

(b) Grant payments disbursed under this LGGA will be disbursed to the Local Government pursuant to N.C. Gen. Stat. § 143B-437.70 *et seq.*, the terms of the Program Guidelines and Procedures for Commitment of Funds from the One North Carolina Fund, established pursuant to N.C. Gen. Stat. § 143B-437.73 and in effect as of the effective date of this LGGA (the **"Program Guidelines"**), consistent with the terms and schedule established in the CPA.

(c) Grant disbursements are conditioned upon the execution of the CPA between the Local Government and the Company, and any other required parties thereto, in a form acceptable to DOC.

(d) To receive a Grant disbursement, the Local Government must provide or cause to be provided to DOC a properly executed CPA, proof that the Company has performed its obligations under the CPA, proof that the Local Government has met its obligation to provide the Match, a duly executed completed disbursement request and certification in the form of Exhibit A hereof (the **"Local Government Disbursement Request"**), and a duly executed completed Company's disbursement request and certification in the form of Exhibit A to the CPA (the **"Company Disbursement Request"**).

II. LOCAL GOVERNMENT'S COMMITMENTS

(a) The Local Government agrees to perform the Program and to abide by all commitments, terms and representations in the Local Government Application.

(b) The Local Government agrees to provide the Match in a manner consistent with N.C. Gen. Stat. § 143B-437.72(c)(1), the Program Guidelines and Procedures, and the Local Government Application. The Local Government will provide to the DOC a copy of the duly executed agreement between the Local Government (or other local entity) and the Company governing the local incentives that will be provided to the Company for the Project (the **"Local Incentive Agreement"**), at the time the Local Government returns the executed LGGA. The Company will be ineligible for a Grant disbursement until the Local Incentive Agreement is provided to the DOC. The Local Government will report to the DOC the amount of each incentive payment that is provided to the Company under the Local Incentive Agreement, within thirty (30) days of the date on which it is provided, whether or not the CPA remains in effect.

(c) The Local Government agrees to take all steps reasonably necessary to ensure and to establish to DOC that the required levels of jobs are created and/or retained, the required salary levels are achieved, the required levels of investments are made, statutorily qualifying expenses are incurred, any required

environmental permits are obtained, and any other required performance criteria are satisfied, and that no Grant funds are disbursed until the performance criteria in the CPA have been met.

(d) The Local Government agrees to take whatever steps may be reasonably necessary to ensure and to establish to DOC that Grant funds disbursed by the Local Government are used only for purposes allowed under the statutory authority creating the Program.

(e) The Local Government agrees to take whatever steps may reasonably be required, after consultation with the Secretary of DOC (the "**Secretary**") and not inconsistent with the Secretary's authority under the CPA, to recapture all disbursed funds for which the Local Government and DOC have a right to be reimbursed.

(f) The Local Government acknowledges that DOC has a right to recapture funds under the CPA and that such right does not relieve the Local Government of its own responsibility to recapture funds.

(g) The Local Government agrees to otherwise reimburse DOC for any funds improperly disbursed, provided, however, that Local Government is under no obligation to reimburse DOC for any improperly disbursed funds that were disbursed with DOC's prior permission.

(h) The Local Government agrees to keep and maintain books, records, and other documents relating to the receipt and disbursement of the Grant and the fulfillment of this LGGA. The Local Government shall provide any information DOC requests in order to produce reports or compile data required by the General Assembly. If the Local Government fails to keep and maintain books and records necessary for verifying fulfillment of this LGGA, the Secretary may in his discretion declare this LGGA to be in default, withhold payments for or under this LGGA, and/or require reimbursement of all or any portion of Grant funds previously paid. Prior to taking such action, the Secretary will endeavor to communicate with the Local Government and the Company to discuss the circumstances and the actions being contemplated.

(i) The Local Government agrees to provide any duly authorized representative of DOC or the State of North Carolina at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the Grant for a period of three years following the last payment of Grant funds or for the inspection period specified in the CPA, whichever is longer. To the extent any information or documents gathered pursuant to this section would be regarded as confidential or not subject to disclosure under federal law or the North Carolina General Statutes (to include, without limitation, N.C. Gen. Stat. §§ 132-1 *et seq.*, commonly referred to as the "Public Records Act"), the Local Government shall clearly identify and mark them as such and that information will, to the extent allowed by law, be treated as confidential and not subject to disclosure by DOC and its authorized representatives. If the Local Government fails to provide such access and right of inspection, the Secretary may exercise discretion to declare this LGGA in default, to withhold payments under this LGGA and/or require reimbursement of all or any portion of the Grant paid.

(j) The Local Government shall comply with all lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina, and any other applicable laws and/or Executive Orders currently or hereafter in force.

(k) In the event that the Company fails to fulfill its responsibilities under the Company Application and/or CPA, including its responsibilities to create and/or retain jobs, make investments, and incur statutorily qualifying expenses, the Local Government, after consultation with the Secretary and not inconsistent with the Secretary's authority under the CPA, shall promptly exercise its rights and remedies to require repayment of funds, or to assess such other penalties as may be provided for in the CPA.

(l) In addition, in the event that the Company fails to fulfill its responsibilities under the Company Application and/or CPA, including its responsibilities to create and/or retain jobs, make investments, and incur statutorily qualifying expenses, and the Local Government recaptures funds from the Company, the Local Government shall promptly pay to DOC the Grant amounts which it is able to collect.

(m) By not later than January 31 of each year following a calendar year until the full Match has been disbursed to the Company, the Local Government shall submit to the DOC a report detailing Match payments made during the calendar year just ended, together with a cumulative tally of all Match payments made through the end of that calendar year. In addition, the Local Government shall report all other Local Government financial contributions made for the Project. This is required in order to comply with N.C. Gen. Stat. §143B-437.07. Failure to timely file this report will result in ineligibility for Grant payments.

III. GENERAL PROVISIONS

(a) The parties to this LGGA agree and understand that the payment of all sums specified in this LGGA is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds to DOC for this purpose.

(b) Failure of DOC at any time to require performance of any term or provision of this LGGA shall in no manner affect the rights of DOC at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of DOC of any condition or the breach of any term, provision or representation contained in this LGGA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

(c) The recitals are an integral part of this LGGA.

(d) This LGGA constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina. The parties agree and submit, solely for matters concerning this LGGA, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this LGGA, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation, and enforcement, shall be determined.

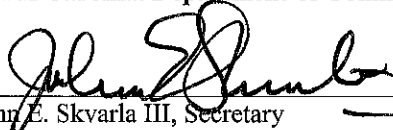
(e) This Grant award shall terminate and be null and void on April 30, 2016 if by that date the Local Government has not delivered back to the DOC, an original of this LGGA and of the CPA, duly executed by an authorized official of the Local Government, and attested in the manner provided below, together with a copy of the Local Incentive Agreement.

Upon execution of this LGGA by DOC and the Local Government in the spaces below, the Local Government hereby accepts the Grant on the terms of this LGGA, effective on the date indicated above, and further certifies that the official signing below has been duly authorized by the Local Government's governing body to execute this LGGA.

North Carolina Department of Commerce

Date: 2.24.16

By:

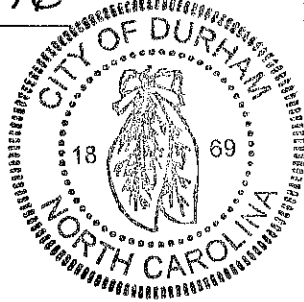

John E. Skvarla III, Secretary
North Carolina Department of Commerce

Signature Page Follows

City of Durham
(Local Government)

Date: 3-9-16

(Official Seal)



By:

Thomas J. Bonfield

Name: Thomas J. Bonfield

Title: City Manager

Authorized Official

Date: 3/9/16

ATTEST:

R. Ann Gray

, Clerk

**EXHIBIT A
TO LOCAL GOVERNMENT GRANT AGREEMENT**

LOCAL GOVERNMENT DISBURSEMENT REQUEST AND CERTIFICATION

Project No. 2015-17041

City of Durham (the “**Local Government**”) hereby requests a disbursement in the amount of _____ [spell out dollar amount] (\$) _____ from the North Carolina Department of Commerce (the “**DOC**”), pursuant to that certain Company Performance Agreement between the Local Government and WillowTree, Inc. (the “**Company**”), dated as of November 19, 2015 (the “**CPA**”), and that certain Local Government Grant Agreement between the Local Government and the DOC, dated as of November 19, 2015 (the “**LGGA**,” and, together with the CPA, the “**Agreements**”). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreements.

The Local Government hereby certifies to the DOC that it:

- (i) has provided funds and/or resources for the Project pursuant to the Local Government application to the DOC and the terms of the LGGA, in the amount of _____ (\$ _____), an amount that is at least equal to the amount of the disbursements that have been requested under the LGGA;
- (ii) has provided such funds and/or resources in the following form: _____

_____;
- (iii) has attached true and correct copy of documents evidencing its expenditure of the amount specified in (ii) above for the purposes specified above;
- (iv) will submit proof of receipt, deposit, and proper disbursement of the disbursed DOC funds, to the DOC, within thirty (30) days;
- (v) it is in compliance with all of the terms and conditions of the LGGA, and affirms the representations, warranties, and covenants contained therein; and

- (vi) to its best knowledge and belief, the Company's Disbursement Request accompanying this certification is accurate, the Company is eligible to receive funds from the Grant in the amount specified herein, under the terms of the CPA, and the Local Government is not aware of anything that would make the Company ineligible for these funds.

This certification shall be deemed to be made a part of the LGGA and is incorporated therein, and governed by its terms and conditions. Upon execution of this certification, the Local Government accepts its terms, effective on the date indicated above, and further certifies that the official signing below has been duly authorized to execute this certification by the Local Government's governing body, and the agreements and certifications contained herein are legally valid and binding on the Local Government.

**City of Durham
(Local Government)**

Date: _____

By: _____

Name: _____

Title: _____

Authorized Official

(Official Seal)

ATTEST:

_____, Clerk
